

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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FREDRICK HERMAN FISHER,

Plaintiff,

v.

Case No. 06-CV-11110-DT

PATRICIA L. CARUSO, et al.,

Defendants.

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**OPINION AND ORDER DENYING WITHOUT  
PREJUDICE DEFENDANTS' MOTION TO DISMISS**

Pending before the court is Defendants' motion to dismiss, which was filed on December 1, 2006. The matter has been fully briefed<sup>1</sup> and the court concludes that a hearing is unnecessary. See E.D. Mich. LR 7.1(e)(2). Defendants' grounds for relief rely exclusively upon Plaintiff's alleged failure to fully exhaust administrative remedies for his claims. The motion cites Sixth Circuit case law that was largely abrogated by the United States Supreme Court in *Jones v. Bock*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 910 (2007). The court will therefore deny the motion without prejudice. At a later time, if appropriate, Defendants may reformulate any exhaustion arguments in a newly filed motion. Accordingly,

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<sup>1</sup>The court notes that Plaintiff's December 29, 2006 reply to Defendant's reply brief was improper under the local rules. See E.D. Mich. LR 7.1.

IT IS ORDERED that "Defendants' Motion to Dismiss" [Dkt # 48] is DENIED  
WITHOUT PREJUDICE.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: February 20, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 20, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522